IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.393 of 1995

Reserved on: July 18, 2007

Decided on*: *July 20, 2007.

Kali Dass ***…..Appellant.***

VERSUS

Mumta Co-operative Agri. Services Society & Ors.

…..Respondents.

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant:	**Mr.O.P.Sharma, Sr.Advocate with Mr.Pushkal Chauhan, Advocate.**
For the Respondents:	**Mr.Ajay Sharma, Advocate for respondents No.1, 2 and 6.**
	Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G. for respondents No.8 andkl 9.

Kuldip Singh, Judge

The plaintiff is in appeal against the judgment and decree dated 1.12.1994 passed by learned District Judge, Kangra at Dharamshala in Civil Appeal No.139-K/XIII of 1994 confirming the judgment and decree dated 8.9.1993 passed by learned Sub Judge 1st Class, Kangra in Civil Suit No.246/1983. The parties are referred in the same manner as in the trial Court.

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

2. The facts, in brief, are that plaintiff filed a suit for declaration that resolution dated 4.9.1982, passed by defendant No.1, terminating the services of plaintiff, is wrong, illegal and without jurisdiction. He has alleged that he was appointed Secretary of defendant No.1 on 28.5.1971 on a fixed salary of Rs.250/- per month. The resolution dated 4.9.1982 is against the principles of natural justice, malafide and without jurisdiction. He has alleged that no proper notice for convening the meeting of General Body of defendant No.1 was given. The quorum for the meeting was also not complete. The signatory of the resolution were either not members of defendant No.1 or were defaulters having no right to vote. He was not given any opportunity of hearing when the resolution dated 4.9.1982 was passed. The resolution dated 4.9.1982 was illegal, therefore, the approval given by the District Cooperative and Supplies Officer, Dharamshala is also bad. As a consequential relief, he has prayed for reinstatement in the service from the date of termination with all consequential benefits.

3. The suit of the plaintiff was resisted by defendants. It was admitted that plaintiff was serving as a Secretary of defendant No.1 and his services were terminated vide resolution dated 4.9.1982. It has been averred that resolution was legal and valid and was passed according to the rules governing defendant No.1. The defendant No.8 rightly approved the resolution terminating the services of plaintiff. The objections of estoppel, *locus standi* of the

plaintiff to file the suit, jurisdiction of the civil Court to try the suit, *res-judicata* and non service of notice under Section 80 CPC have also been taken.

4. The learned Sub Judge 1st Class, Kangra dismissed the suit on 8.9.1993 against which plaintiff filed appeal which was dismissed by learned District Judge on 1.12.1994 and the plaintiff has come in this Court in second appeal against the judgment and decree dated 1.12.1994. The appeal has been admitted on the following substantial questions of law:-

> *(i) Whether the Courts below have misread and mis-interpreted the law and facts of case particularly the law and bye-laws of co-operative Society and its effect?*
>
> (ii) *Whether the resolution dated 4.9.1982 which was passed by 8 persons in the General House of 79 persons holds good against the servant of the society and removal of the Secretary without approval of the Registrar of Coop. Society?*

5. I have heard the learned counsel for the parties and gone through the record.

6. The learned counsel for the plaintiff has submitted that the Courts below have misread and misinterpreted the material on record and the bye-laws of defendant No.1 society. It has been submitted that resolution dated 4.9.1982 was passed by 8 persons in General House of 79 persons and no approval for termination of the

services of plaintiff was taken from Registrar, Cooperative Societies. The learned counsel for defendants No.1, 2 and 6 and learned Advocate General have supported the impugned judgment and decree.

Substantial Questions of law No.(i) and (ii):

7. PW-1 Kali Dass has stated that he was appointed Secretary by Registrar, Cooperative Societies and he could be removed only by the Registrar. He was terminated illegally vide resolution dated 4.9.1982. He was not given any notice. He was to be given 15 days notice before removal. He has placed on record notice Ext.P-1. He has stated that Raj Kumar minor, Bablu Ram of Forest Department and Barad Ram non member were present in the General House. In cross examination, he has admitted that Managing Committee gave him notice on 21.8.1982. The meeting of the General House was held on 4.9.1982. He has denied the suggestion that 79 members were present in the General House. PW-2 Gurbachan Singh has stated that he was asked to produce audit note of the Society and not the bye-laws. PW-3 Prem Dass has stated that he was not associated with defendant No.1 society in the year 1982. PW-4 Bablu Ram has stated that he was not aware whether he signed any paper for terminating the services of the plaintiff. He only puts thumb mark. DW-2 Bihari Lal, President of defendant No.1 Society, has stated that a notice was issued to plaintiff on 14.8.1982 which was received by him on 2.9.1982. DW-4

G.C.Vaidya, who was Assistant Registrar, Dharamshala from 1980 to 1982 and defendant No.1 Society was under his jurisdiction, has stated that he gave approval for termination of the services of plaintiff on 18.9.1982 vide order Ext.DW-4/A.

8. The learned District Judge has recorded a finding that plaintiff has not placed on record his appointment letter so as to show that he was appointed Secretary of defendant No.1 society by Registrar, Cooperative Societies. In the absence of such material, the plaintiff has failed to prove that his services could be terminated only by Registrar, Cooperative Societies and none else. The plaintiff has admitted that a notice regarding the meeting was received by him. The plaintiff did not attend the meeting. The plaintiff having notice of the meeting dated 4.9.1982 and when he opted not to attend the said meeting cannot be permitted to raise grievance against the meeting dated 4.9.1982 that such meeting was held without notice to him.

9. The plaintiff has alleged that the signatory to the resolution dated 4.9.1982 were either defaulters or non members but he has led no evidence to this effect. The two Courts below have appreciated the pleadings and other material on record. The two Courts below have recorded pure findings of fact which require no interference in second appeal. The learned counsel for the plaintiff has failed to make out any case for interference. The substantial questions of law No.(i) and (ii) are decided against the plaintiff and in favour of the defendants.

10. The result of the above discussion is that the appeal is dismissed with no order as to costs.

July 20, 2007*.** ***(Kuldip Singh)
(soni) ***Judge***